Supreme Court, U.S.
FILED

01 832 SEP 05 2001

OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

Sophie Balanay
Dennis Balanay,

Petitioner,

v.

Coates & Frey
Attorney at Law
probate attorney,
Sheila S.H. Noguchi

Respondent

On Petition for Writ of Certiorari
to the Supreme Court of Hawaii

PETITION FOR WRIT OF CERTIORARI

Pro, Se
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
(808) 637-9254

Pro, Se for Petitioner

47 pp

QUESTIONS PRESENTED FOR REVIEW

1. Under statutes at law of 988- Standard Federal Tax Reports sec. 531 probate no. 89-165 in the matter of the estate of Bonifacio Balanay Sr. (Deceased) legal heirs have to inform the IRS Internal Revenue Service to reexamine the entire estate before closing the estate within the State of Hawaii.

2. Under statutes at law of 988-Standard Federal Tax Reports sec. 531, code 531 was not upheld by the Supreme Court of the State of Hawaii.

3. Also probate attorney Sheila S.H. Noguchi of probate no. 89-0165 did not uphold to statutes at law of 988-Standard Federal Tax Report sec. 531, code 531.

PARTIES TO THE PROCEEDINGS

1. The petitioners in this action are the surviving spouse Sophie Balanay and her seven children,
   1. Bonifacio Balanay, Jr.
   2. Audrey Balanay
   3. Calvin Balanay
   4. Wanda Balanay
   5. Stacey Balanay
   6. Dennis Balanay
   7. Gary Balanay

   Under Hawaii Revised Statues, HRS Section 532-2 To Heirs surviving spouse Sopie Balanay and her seven children are the legal heirs to probate no. 89-0165 in the matter of the estate of Bonifacio Balanay, Sr., (DECEASED)(Formal Intestate)

   Sophie Balanay and her seven children are the PETITIONERS in this action.

2. Coates & Frey Attorneys at Law - probate attorney Sheila S.H. Noguchi probate attorney of probate no. 89-0165 also the Supreme Court of the State of Hawaii case no. 22759
   Respondent.The respondent in this action is probate no. 89-0165 attorney at law Sheila S.H. Noguchi and the Supreme Court of the State of Hawaii case no. 2759.

   ADDRESS
   Coates & Frey Attorneys at Law
   Pioneer Plaza, Suite 1400
   900 Fort Street Mall
   Honolulu, Hawaii 96813

3. Under rule 12.7 of the Supreme Court of the United States, petitioner Dennis Balanay wants the entire seven volumes of civil no. 63547 Bonifacio Balanay, Sr. v. Waialua Sugar Mill and all other defendants to be all part of this court, proceeding that is pending within this court, The Supreme Court of The United States.

PARTIES TO THE PROCEEDINGS

Civil no. 63547 court documents are filed within Honolulu,Hawaii in the circuit of the First Circuit Court, State of Hawaii

(a). Under rule 12,7 petitioner Dennis Balanay wants the entire court Documents filed within civil no. 80-0598 Bonifacio Balanay, Sr.(plaintiff) v. Guaranty Performance and all other third-party defendants, to be transported into this court pro ceeding to become all parts to this court proceeding.

(b) Under rule 12.7 petitioner Dennis Balanay wants the entire court documents file within probate no. 89-165 in the matter of the estate of Bonifacio Balanay, Sr. (formal intestate) to be transported and to be all parts of this court proceeding.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Dennis Balanay (Petitioner) requests that a Writ of Certiorari issue to review the judgement of of the State of Hawaii Supreme Court - court order filed June 8, 2001 - ORDER DENYING MOTION FOR RECONSIDERATION against the estate of probate no. 89-165 in the matter of the estate of Bonifacio Balanay, Sr. in, testate) under the U.S. Supreme Court Rule 12,7 summary disposition order in Case no. 22759 to become all parts to this issue. May 16, 2001 Summary Disposition Order filed within the Supreme Court of the State of Hawaii can be seen in Appendix 1(a) Appendix 1(b).

CITATION TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Hawaii was mailed to and given to Dennis Balanay on this date of June 8,2001, June 8, 2001 Hawaii's Supreme Court opinion said (ORDER DENYING MOTION FOR RECONSIDERATION) against beneficiary appellant Dennis Balanay, June 8,2001 Hawaii's Supreme Court opinion is set forth within appendix p1.

JURISDICTION

A MOTION FOR RECONSIDERATION was filed May 29, 2001 by Dennis Balanay within the Supreme Court of the State of Hawaii set forth within appendix p2. through appendix p.7. Within ten days after May 29, 2001 filing of the MOTION FOR RECONSIDERATION, on June 8, 2001 the final judgement of the Supreme Court of the State of Hawaii court order - court opinion was filed and a copy was sent to Dennis Balanay within 60 days on this date, September 5,2001. Dennis Balanay filed a PETITION FOR WRIT OF CERTIORARI within this court, The United States Supreme Court.

JURISDICTION

On September 17 2001, the United States Supreme Court Office of the Clerk William K. Suiter clerk of the court returned 39 copies of Dennis Balanay's September 5, 2001 Petition for Writ of Certitiorari. Because Dennis Balanay's September 5,2001 Petition for Writ of Certitiorari did not comply with rule 14 of this court proof of office of the clerk William K. Suiter September 17, 2001 letter is set for within appendix p.29. Therefore, this petition is filed within the time period allowed by the Court. The jurisdiction of this court is invoked under U.S. Supreme Court Rule 10(c) and 28 U.S.C. sec. 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS

Within probate no. 89-165 in the matter of the estate of Bonifacio Balanay, Sr. (Deceased)(Formal intestate) This case involves these statutory provisions

(a). Hawaii Revised Statutes sec. 532-2 to heirs, set forth within appendix p25 through p28

(b). Hawaii Revised Statutes sec. 554A-6 set forth within appendix p28

(c). Hawaii Revised Statutes sec. 386-5 set forth within appendix p15 through p19

(d) 988 CCH Standard Federal Tax Reports Code 531, set forth within appendix p23

STATEMENT OF THE CASE

On about November 21, 1978 Waialua Sugar Mill's bagasse system work project exploded and Bonifacio Balanay, Sr. was injured. Bonifacio Balanay entire body was burnt. 60%

A copy of State of Hawaii's Department of Labor and Industrial Relations Disability Division - (DECISION) of November 21, 1978.

Bonifacio Balanay, Sr.'s injuries is set forth within appendix p8. through p9.

ALSO

On November 23, 1978 Bonifacio Balanay, Sr. was flown to Brooke Army Medical Center in the State of Texas. Bonifacio Balanay, Sr. was well taken care of. Bonifacio stayed at Brooke Army Medical Center for 90 days. Bonifacio Balanay, Sr.'s medical bill was a total of about $58,000.00.

A copy of his medical bill is set forth within appendix p10.

Appendix p11 is a notice to inform Waialua Sugar Mill's Project Manager that under 42 United State Code 2651-2653 Bonifacio Balanay, Sr. 60% entire body injury medical bills need to be paid.

STATEMENT OF THE CASE

Bonifacio Balanay and Sophie Balanay brought law suit against Waialua Sugar Mill and all third-party defendants under court docket no. case no. 63547 - civil no. 63547

Civil no. 63547 law suit can be read into within Appendix p12 through p14 also appendix p20 which is attached onto this court document.

At the same time

Bonifacio and Sophie Balanay brought law suit against Waialua Sugar Mill and all third-party defendants within the Hawaii's Federal Court, in the United State Court for the district of Hawaii civil no: 80-0598. For proof of the above statement will this court read into appendix p15, p16, p17, p18, p19 is a copy of civil no. 80-0598.

Under case note KAMALI V. Hawaiian Electric 54 Haw 158 which reads -purpose of such legislation is to achieve certainty - certainty that an employee will be compensated for all work injuries regardless of his negligence or fault, and certainty with regard to the amount for which the employer shall be liable.

SETTLEMENT

Bonifacio Balanay, Sr. and Sophie Balanay received a gross settlement of about $425,000.00. Proof of above statement is set forth within appendix p21. Less amount retained for worker compensation lien pending disposition re: same $ 170,000.00 Also see appendix p23 for Code 531.

Notice

Bonifacio Balanay, Sr. & Sophie Balanay set aside the $170,000.00 within Paine Webber investment account since January 2, 1985 under the account number: JR 68084-67. Account number: JR 68084 is watch over by Paine Webber investment executive manager

Settlement

account number: JR 68084-67, account number JR 68084-67 is watched over and managed by PaineWebber investment executive,
Mr. Gregory Boxold
PaineWebber
P.O. Box 3347 Honolulu, Hawaii 96801-3347
Telephone: (808) 5364511
Will this court see and read into appendix p.21(a), p.21(b) and p.21(c) also Appendix 23 for Code 531.

For 16 years

Bonifacio Balanay, Sr. & Sophie Balanay $170,000.00 worker compensation lien re same, interim account has been gaining about 5% interest within Bonifacio Balanay, Sr. & Sophie Balanay PaineWebber investment account number: JR 68084-67 will this court see and read into Appendix p.21, p.21(a),(b),(c) also see Appendix 23 for Code 531.

Under case note: 209 F2d 516 Holland v. U.S. the Internal Revenue Service need not look into back records, tax back records to calculate the interest gain. they were able to come into court with an about estimate of about calculating of all back payment of tax payment.

Notice

Will this court take notice that under Code 531, if an service type corporation has $150,000.00 will be examined by the IRS to determine whether they were accumulated with tax avoidance intent (code sec. 532(a) and code sec. 535(c). If the intent was present even if it was not the dominant motive, the corporation will be penalized. Set forth in appendix 23 Code 531.

If the intent was present even if was not the dominant motive the corporation will be penalized, to see and read into 988 CCH Standard Federal Tax Reports code 531 Accumulated Earning Tax set forth within appendix p23 and p23-(a)

Under case note: 304 U.S. 283 Helvering v. National Grocery, (9) to weigh the evidence, draw inferences from it and declare the result is a function of the board of tax appeals not subject to review by the circuit court of appeal, p.294.92 F 2d 931 reversed. Set forth inside of appendix p.23, p.23(a) and appendix p.24.

Under statutes at law of 988 CCH Standard Federal Tax reports code 531, Bonifacio and Sophie Balanay January 2, 1985 interim account $170.000.00 worker compensation lien which is set aside within Paine Webber account number: JR 68084-67 has to be examined by the (IRS) internal revenue service under 988 CCH standard Federal Tax Reports Code 531. Because any type of corporation which has $150,000.00 has to be examined by the (IRS) for tax avoidance. PaineWebber is a corporation investment company which is managing Sophie Balanay and Bonifacio Balanay, Sr. $170.000.00 interim account same/same Bonifacio Balanay's PaineWebber account number: JR-68084-67, set forth within appendix p.21, p.21(a) through p.21(c).

For 16 years Bonifacio Balanay and Sophie Balanay has not paid any Federal and State Income Tax of account no: JR 6808467.

Respondent

Respondent counsel of the records Coates & Frey - Attorneys at Law probate no 89165 in the matter of the estate of Bonifacio Balanay (Deceased) (formal intestate) counsel Sheila S.H. Noguchi informed Honolulu probate judge Kevin Chang that the estate of Probate no. 89165 in the matter of the estate of Bonifacio Balanay, Sr. (deceased) formal intestate) is ready to be closed. Respondent counsel of the record attorney Sheila S.H. Noguchi was informed by Hawaii Supreme Court under case no. 22759 document filed Oct 29,1999 within the Hawaii Supreme Court inform counsel of the record attorney Sheila S.H. Noguchi by court order " within twenty days of a closing letter from the Internal Revenue Service approving the fiduciary income tax return, counsel for the personal representative shall: (a) prepare a final judgement closing the proceedings in probate no. 89-0165 and (b) deliver to the circuit judge dated: Honolulu, Hawaii, October 29, 1999 under the United States Supreme Court rule 12.7 petitioner Dennis Balanay wants this court document of October 29,1999 Hawaii Supreme court case no. 22759 to be transmitted into this court to be all part of this (petitioner) petition for writ of certiorari. under rule 12.7 petitioner filed a court document within Hawaii Supreme Court filed May 3, 2000 RECORD ON APPEAL exhibit (A) is a copy of October 29,1999 court order. Petitioner Balanay wants May 3, 2000 entire court document to all parts to this petition for writ of certiorari.

Counsel of the record Sheila S.H. SueNoguchi did not have no approval letter from the (IRS) internal revenue service did not approve to the closing of probate no. 89-0165 in the matter of the estate of (DECEASED) Bonifacio Balanay Sr. (formal intestate) under Hawaii Revised Statutes section 554-A Power exercisable by joint liability.

Under HAS 554-A-6(c) , this section does not excuse a cotrustee from the liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust COPY Of HRS 554-6 (a),6(b),6(c) which is set forth within appendix p.28

Under 988 CCH Standard Federal Tax Reports code 531 statute at law which read any corporate service with $ 150,000.00 money value has to be examine by the (IRS) internal revenue service for any intent of tax avoidance, if that intent was present, even if it was not the dominant motive, the corporation will be penalized code 531 is set forth within appendix p.23 and appendix p.23(a)

Trustee

Under HRS 554-A6(c) it is petitioner Dennis Balanay trustee duty to protect probate no. 89-0165 estate, under code 531 petitioner has to inform the (IRS) to examine probate no. 89-0165 entire estate for payment of Federal and State Income Tax back payment of said 16 years interim account $170,000.00 set forth within appendix p21, p21(a) of probate no. 89-0165 estate.
also set forth Code 531 within appendix 23.

STATEMENT OF THE CASE

Respondent counsel of the record of probate no. 89-0165 Attorney Sheila S.H. Sue-Noguchi and Counsel of the record attorney Steven Trecker counsel for court proceeding case no. ,civil no. 63547 set forth in appendix p20 is a copy of court proceeding of Bonifacio Balanay same/same Sophie Balanay v. Waialua Sugar Mill Attorney Sheila S.H. Sue-Noguchi and Attorney Steven Trecker is not entitled to close probate no. 89-0165 in the matter in the estate of Bonifacio Balanay, Sr. (Deceased) (formal intestate)

Because under statutes at law of 988 CCH Standard Federal Tax Reports code 531, the entire estate of probate no. 98-0165 has to be examined by the (IRS) internal revenue service for intent of tax avoidance. The $ 170,000.00 interim account came out civil no. 63547 Bonifacio Balanay v. Waialua Sugar Mill and all third-party (defendants) set forth within appendix p.12, p.13, p.14, p.20 Attorney Steven Trecker was the counsel of the record of civil no: 63547.

Under Hawaii Statutes 532-2 to heirs petitioner Dennis Balanay is a legal heir to probate no: 89-0165 copy of birth, live birth certificate set forth within appendix p25, p.26, p.27 under Hawaii Revised Statutes sec 554A-6 (c) petitioner Dennis Balanay is a legal surviving trustee to probate no. 89-0165, therefore this court will need my approval of the (IRS) to close the estate . Also will this court see and read into Appendix 25, 26, 27 will reveal Sophie Balanay's seven surviving children live birth/certificate.

REASON FOR GRANTING THE WRIT

Respondent, attorney counsel for the record probate no. 89-0165 probate attorney Sheila S.H. Sue-Noguchi came into several court hearing asking Honolulu probate judges to close the estate of probate no. 89-0165 in the matter of the estate of (Deceased) Bonifacio Balanay Sr. (formal intestate) and Petitioner Dennis Balanay filed a NOTICE OF APPEAL against all court hearings.

Under the United State Supreme Court rule12.7 petitioner want this court to transmit all court records of civil no. 63547 set forth in appendix 12,13,14 and within appendix p.20 also all court records of civil no. 80-0598 Bonifacio Balanay, Sr. v. Waialua Sugar Mill, civil no:63547 Bonifacio Balanay, Sr v. Waialua Sugar Mill also all court records filed within probate no. 89-0165 Set forth in appendix 15 through 19.

At all court hearing within probate no. 89-0165 Petitioner Dennis Balanay inform counsel of the record attorney Sheila S.H. Sue-Noguchi and Honolulu probate Judges' that under the (IRS) code 531 the estate of probate no. 89-0165 has to be examine by the (IRS) internal revenue service has to examine the entire estate of probate no. 89-0165 because the estate of probate no. 89-165 has a money Value of about $ 170,000.00 within the date of January 2, 1985 which is gaining about 5% interest to this present date and that this $170,000.00 is within an account number: JR 68084-67 within Paine Webber Set forth in appendix p21(a), (b), (c). Also see appendix 23 Code 531 of the IRS.

Notice

Within case no. 22759 filed within the Supreme Court of the State of Hawaii actual Court transcript of August 13, 1999 probate no. 89-0165 can be seen and read by this court. Appendix 1(a) p.9 is where petitioner informs Honolulu probate judge Kevin S.C. Chang that the entire estate of probate no. 89-0165 has to be reexamined by the Internal Revenue Ser-

REASON FOR GRANTING THE WRIT

vice (IRS) under code 531 for tax avoidance. So under the U.S. Supreme Court rule 12.7 petitioner Balanay wants the entire court records of Nov 12, 1999 Hawaii Supreme Court court documents of case no. 22759 to be all parts of this petition for Writ of Certiorari.

And that executive investment manager managed the estate of Bonifacio Balanay, Sr. $170,000.00 account account number: 68084-67 Paine Webber investment executive who watch over all the entire account no: JR-68084-67 probate no. 89-0165 $170,000.00 since January 2, 1985 until present date at a interest of about 5% is Mr. Gregory Boxold

P.O. Box 3347
Honolulu, Hawaii 96801
Telephone (808) 536-4511

Copy of $ 170.000.00 is set forth within appendix 21, code 531 see appendix 23

Statutes to be upheld

Because the estate of Probate no. 89-0165 in the matter of the estate of (deceased) Bonifacio Balanay, Sr. (formal intestate) has a money value of about $170,000.00 since January 2,1985 set forth within appendix 21, and 21(a) under statutes at law of 988 CCH Standard Federal Tax Reports code 531 all corporate type service which has about $150,000.00 has to be examined by the (IRS) for intent of tax avoidance. code 531 is set forth within appendix 23.

Therefore attorney Sheila S.H. Sue-Noguchi is not entitled to close the estate of probate no. 89-0165 until under code 531 the (IRS) examine the entire estate $170,000.00 set forth in appendix 21, Code 531 set forth in appendix 23.

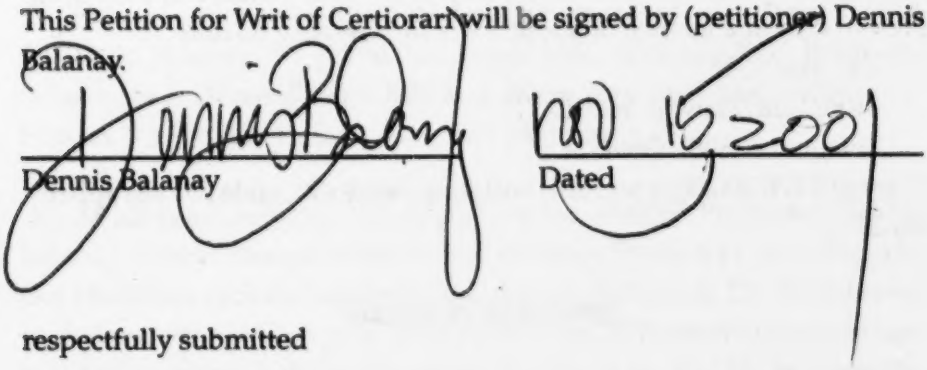
of probate no. 89-0165 because the estate has a money value of about $ 170,000.00 set forth within appendix 21 and appendix 23 code-531.

CONCLUSION

for all the reasons set forth above, the petition a writ of certiorari should be granted.

ACKNOWLEDGEMENT

This Petition for Writ of Certiorari will be signed by (petitioner) Dennis Balanay.



Dennis Balanay — Dated

respectfully submitted

pro se,
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
Telephone: (808) 637-9254
(petitioner)

(Respondent)
Coates & Frey
Attorneys at law
Attorney Sheila S.H. Sue-Noguchi
900 Fort Street Mall, Suite 1400
Honolulu Hawaii 96813

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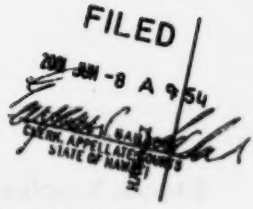
App. 1



No. 22759

IN THE SUPREME COUNT OF THE STATE OF HAWAII

IN THE MATTER OF THE ESTATE

OF

BONIFACIO BALANAY, SR., DECEASED.

APPEALS FROM THE FIRST CIRCUIT COURT
(NO.22759 and 23389 (PROBATE NO. 89-165)

ORDER DENYING NOTION FOR RECONSIDERATION.
(BY: MOON, C.J., LEVINSON, NAKAYAMA,
RAMIL and ACOBA, JJ.)

The motion for reconsideration filed on May 29,2001 by the beneficiary-appellant Dennis Balanay acting pro. se. requesting that this court reconsider it summary disposition order filed May 16.2001 is hereby denied,

Dated Honolulu, Hawaii, June 8,2001

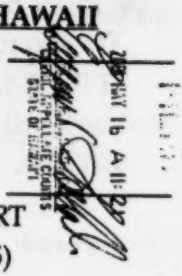
Dennis Balanay
beneficiary-appellant
pro se on the motion

"s/ "

No. 22759

IN THE SUPREME COUNT OF THE STATE OF HAWAII

IN THE MATTER OF THE ESTATE
OF
BONIFACIO BALANAY, SR., DECEASED.



APPEALS FROM THE FIRST CIRCUIT COURT
(NO.22759 and 23389 (PROBATE NO. 89-165)

SUMMARY DISPOSITION ORDER
(BY: MOON, C.J., LEVINSON, NAKAYAMA,
RAMIL and ACOBA, JJ.)

Upon carefully reviewing the record and the brief, in this consolidated matter,[1] submitted by the beneficiary-appellant Dennis Balanay and having given due consideration to the arguments made and the issues raised by him, it is apparnet that the appellant ahas failed to comply with trequrements of Hawai'i Rules of Appellate Procedure Rule 28(b), which , in itself, provides a sufficient basis for affirming the judgement of the probate court. See Bettencourt v. Bettencourt, 80 Hawai'i 225, 228, 909 P.2d 553, 556 (1995). However, this court has consistently adhered to the policy of affording litigants the opportunity to have their cases heard on the merits, where possible. Id. at 230, 909 P.2d at 558. The only point of error discernable from the appellant's opening brief is the contention that the estate of Bonifacio Balanay, Sr. should not have been closed by the probate court, inasmuch as the Internal Revenue Service was required to investigate its alleged failure to pay taxes. However, Balanay does not support this contention with any relevant legal argument or reference to

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[1] By order of this court, filed on May 1, 2000, appeals in Nos. 22759 and 23389 were consolidated for purposes of briefing and disposition under No. 22759.

facts in the record. Accordingly, we mus disregard his point of error. See State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000); Citicorp Mortgage, Inc. v. Bartolome, 94 Hawai'i 442, 435, 16 P.3d 827, 840 (app. 2000).

Therefore,

IT IS HEREBY ORDERED that the judgement of the first circuit court, filed on April 12, 2000, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, May 16, 2001

On the brief:

Dennis Balanay,
beneficiary-appellant
pro se

"s/ "

App . 2

FILED
2001 MAY 29 P 3:13
R. MIYASHIRA
CLERK, APPELLATE COURT
STATE OF HAWAII

Case no. 22759

IN THE SUPREME COURT OF THE STATE OF HAWAII		
IN THE MATTER OF THE	)	PROBATE NO. 89-165
ESTATE OF	)	(FORMAL INTESTATE)
	)	
	)	First circuit court
BONIFACIO BALANAY, SR.,)		Probate Judge,
(DECEASED)	)	Kevin Chang
	)	EXHIBIT (A) p.1.

MOTION TO RECONSIDERATION

Motion to reconsideration, under Hawaii rule of appellate procedure rule 40-(HRAP) rule 40 ,Appellant Dennis Balanay disagree to Hawaii Supreme Court - court order filed May 16,2001 summary disposition order by (Moon, C.J., Levinson, Nakayama, Ramil and Acoba, JJ.).

1. On about Feb 18,2000 Honolulu Hawaii Supreme Court associate Justice Miro R.Ramil by court order for attorney appellee counsel Sheila S.H. Sue-Noguchi of Coates & Frey attorney at law. Justice Ramil notify this estate of probate no. 89-165 (deceased) Bonifacio Balanay, Sr., legal heirs and attorney Sheila S.H. Sue-Noguchi also probate judge Kevin Chang that the status of (IRS) fiduciary income tax is necessary before the entry of final judgement. In reference to the above statement see and read into EXHIBIT (A) which is attached to back of this court document.

2. Attorney Sheila S.H. Sue-Noguchi did not answer justice Ramil court order within the ten days.

3. On April 12,4000 Honolulu First Circuit Probate Judge Kevin Chang did not have any approval document from the Internal Revenue Service (IRS) for the unpaid estate back tax of (deceased) Bonifacio Balanay, Sr. estate of probate no. 89-165.

4. Justice Ramil was informed that the estate of (deceased) Bonifacio balanay, Sr. Probate no. 89-165 estate has a money value of about $170,000.00 since the year of 1985 and that (deceased) Bonifacio Balanay, Sr.'s legal heirs have never paid any Federal income tax and have never paid any State of Hawaii income tax since 1985 onto present date Justice Ramil court order Feb 18,2000.

5. Statutes of the (IRS)
Which reads, under the internal revenue code 531 of the (IRS) statutes at law says say estate which has about $ 150.000.00 is mosey value has to be reexamine by the (IRS) for as" tax avoidance, in reference to the (IRS) 531 code will this court see and read into appellant Dennis Balanay June 15,2000 court documents - see page 5 which in filed within this court.

Therefore

6. May 16,2001 within case no. 22759 in the Supreme Court of the State of Hawaii, summary disposition order by justice (Moon, C.J., Levinson, Nakayama, Ramil and Acoba, J.J.) judgement of the First Circuit Court filed April 12,2000 is affirmed.

THEREFORE

7. Before April 12,2000 court hearing in the matter of (deceased) Bonifacio Balanay, Sr. legal heirs and Appellee's attorney Sheila S.H. Sue-Noguchi informed by court order by the Hawaii Supreme Court Justice Mario R. Ramil said that the status of the (IRS) fiduciary income tax filing necessary for the entry of final judgement.
Therefore, April 12,2000 judgement is actually Hawaii Supreme Court Justice - Associate Justice Mario R. Ramil court order which was dated on Feb 16, 2000 in reference to above Hawaii Supreme court court order read and see exhibit (A) which is attached on the back of court document Motion For Reconsideration.

App. 6

FILED
2000 FEB 18 A 11:56
R. MIYAHARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

No. 22759

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the matter of	)	Probate no.89-165
the estate of	)	
	)	
Bonifacio Balanay, Sr.,	)	
(Deceased)	)	
	)	

Upon review of the record, it appears that this case is temporary remanded to the Circuit Court for a final judgement and the case was erroneously placed on the ready calendar on January 26, 2000 therefore it is hereby ordered that this case is removed from the ready calendar.

It is further ordered that appellee's cousel Sheila S.H. Sue-Noguchi, shall, within ten days from the date of fiduciary income tax filing necessary for entry of final judgement.

Dated: Honolulu, Hawaii
February 18,2000.

"s/ "

MARIO R. RAMIL
Associate Justice

EXHIBIT (A)

ACKNOWLEDGEMENT

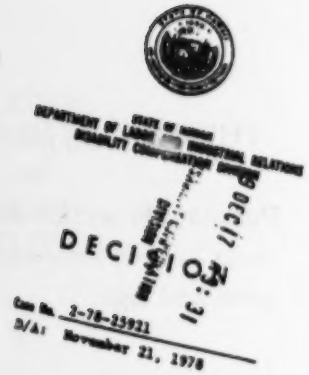
This court document (motion of reconsideration) is signed by Appellant Dennis Balanay who is the legal heir of (Deceased) Bonifacio Balanay,sr. within probate no. 89165

"s/ DENNIS BALANAY ON THIS DATE OF MAY 26, 2001

Pro se,
Dennis Balanay
P.O. Box 357
Honolulu, Hawaii 96712
Telephone: 637-9254

Certificate of service
Coates & Frey
Attorneys at Law

Sheila S.H. Sue-Noguchi
Pioneer Plaza Suite 1400
Honolulu, Hawaii 96813



Claimant	Bonifacio Balanay, Sr. 66-031 D Mahaulu Lane Haleiwa, Hawaii 96712
Employer	Waialua Sugar Company, Inc. P.O. Box 665 Waialua, Hawaii 96791
Insurance carrier	Self- Insured

Such investigation of the above-entitled matter having been made as he deems necessary, the Director makes the following

FINDING OF FACT

On November 21,1978 claimant was in the employ of the above-named employer; on said date, claimant sustained severe burns over 60% of his body; said injury caused by claimant's wilful intention to injure himself or another, nor by his intoxication; as a result of said injury, claimant sustained severe disfigurement of his entire chest and abdomen; part of his back: both legs and both arms the matter concerning temporary total disability and permanent disability, if any shall be determined at later date; the average weekly wages of the claimant were found to be $ 208.20.

The claimant is in need of some financial help and has asked that the disfigurement portion of this case be paid at this time: the employer has agreed to pay claimant the disfigurement portion of this case at this time just as long as whatever in paid shall be credited against any future disfigurement award.

THEREUPON THE DIRECTOR MAKES THE FOLLOWING

1. Pursuant to section 386-32(a)- severe burn scar over entire anterior chest, heavily keloided; severe burn scars, heavily keloided over both arms and logs

2. Temporary total disability and permanent disability. if any, shall be considered at later date.

By order of the director, December 17, 1979.

"s/ "

Administrator

Appeal: this decision may be appealed by filing an appeal with the Director of Labor and Industrial Relations or his County Representative within twenty days after a copy of this decision has been sent.

VETERANS ADMINISTRATION
Audiel Memorial Veteran hospital
7400 Morton linter Boulevard
SAN ANTONIO, TEXAS 78284
in reply refer to: 671/136F1 (7910)
ss# 576-30-9392
Balanay, Bonifacio

To: Mr. Bonifacio Balanay
c/o District Counsel (O2)
VA Regional Office
P.O. Box 50188
300 Ala Moana Room 2302
Honolulu Hawaii *96850*

Subj: Charges for Emergency Hospitalization
Brooke Army Medical Center
Worker's Compensation- Initial Bill

Admission date: November 23, 1978
Discharge date: February 22,1979

The following reflects the charges for services furnished at Brooke Army Medical Center, Fort Sam Houston, Texas:

92 days of inpatient care:	$634.00 per day	
		$58,328.00
air fare from San Antonio to Honolulu :	$247.69	
		$ 58,575.69

The above inpatient rates are all inclusive and included room and board, physician and nurses fees, x-ray and laboratory examination, drugs and medication and miscellaneous service. Please make check payable to the Veterans Administration The costs are the responsibility of the transferring facility and should be billed to Tripler Army Medical Center by Scott Air Force Base.

"s/ "

L.E. EMARD
Chief, Medical Administration Service

NOTICE TO CLAIM

To: Manager
Waialua Sugar Co., Inc.
Waialua, Hawaii 96791

Take notice that, pursuant to *76* Stat. *593*, 42 United State Code section *2651-2653*, the Unite States of America is entitled to recover, and does hereby make claim for, the reasonable value of hospital, medical, surgical or dental care and treatment (including prostheses and medical appliances furnished or to be furnished

Bonifacio Balanay
P.O. Box 357
Haleiwa, Hawaii 96712

in connection with injuries sustained or disease suffered on or about 11/21/78 under circumstances indicating your legal liability to pay damage thereof. You should immediately send the enclosed copy of this notice to your insurance company.

Inquiries concerning this claim should be addressed to:
District Counsel
VA Regional Office
P.O. Box 50188
Honolulu, HI 96850

cc: Alexander P. Robertson, Esq.
Keith J. Steiner, Esq

Of counsel:
Oliver, Cuskaden and Lee

Attorney-at Law
A law corporation
EVERT CUSKADEN 1296-0
GRAIG KUGISAKI 226-0
Suite 1200
2222 Kalakaua Avenue
Honolulu, Hawaii 96815-2596
Telephone: 922-3355

Attorney for Defendant and
third party plaintiff
Guaranty performance Co., Inc.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1983 DEC 19 AM 11: 25
CLERK

In the CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

BONIFACIO BALANAY and SOPHIE BALANAY plaintiffs, vs. Guaranty performance Co., Inc., defendants and third-party plaintiff vs. American sheet metal et al., third-party defendants	CIVIL NO. 63547 SUBPOENA DUCES TECUM
Allen James Manosa and Marjorie Manosa plaintiffs, vs.	civil no: 63583

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1983 DEC 22 AM 8:49
M. KAWAMOTO
CLERK

PAID
$3.00

"s/ I do hereby certify that this is a full true and correct copy of the original on file in this office pursuant to Section 83-33, Hawaii Revised Statutes. Clerk, Circuit Court, First Circuit State of Hawaii "

Guaranty Performance Co., Inc.)
defendants and)
plaintiff)
vs.)
America sheet metal, et al.,)
third-party defendant)
)

SUBPOENA DUCTUS TECUM

State of Hawaii

TO THE SHERIFF OF THE STATE OF HAWAII OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE STATE OF HAWAII: YOU ARE COMMANDED TO SUBPOENA THE CUSTODIAN OR RECORD, OF THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, 677 Ala Moana Boulevard, Suite 910, Honolulu, Hawaii, and direct him/her to bring with him/her the following documents:

(1) any and all files, records, reports and notes relating to the inci dent of November 1978 resulting in injuries to Bonifacio Balanay and Allen James Manosa to Waialua Sugar Mill, and

(2) all other files, records, reports, and notes relating to the milling operation at the Waialua crushing plant of Waialua Sugar Mill from January 1, 1975 through December 31, 1979 and to appear before the court reporter and notary public.

authorized to administer oath on December 27, 1983 at 10:00 a.m., at the office of Reginal Knipes and Associates, 1136 Union Mall, Suite 901, Alii-Bishop Building, Honolulu, Hawaii 96813, to be disposed by defendant and third-party Plaintiff.

Dated: Honolulu, Hawaii

-3-

Received this subpoena _____
on _____ and _____
at _____
I served it on the within named, _____
By delivering a copy to him/her and tending him/her the fee for one day's attendance and mileage allowed by law.

Dated: Honolulu, Hawaii

-4-

IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF HAWAII

BONIFACIO BALANAY, et al,
plaintiff,

vs.

GUARANTY PERFORMANCE CO., INC.
Defendant and third-party Plainitiff,.

vs.

American Sheet Metal, Inc.,
thirdparty Defendant.,

civil no.80-0590 (consolidated)

Allen James Manosa, et al.,
Plaintiffs

vs.

Guaranty Performance Co., Inc.,
Defendant and third-party Plaintiff,

vs.

American sheet Metal, Inc. et al.,
third-party defendants,

civil no. 80-0601

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
APR 30 1982
at 11 o'clock and 15 min. M.
WALTER A. Y. H. CHINN, CLERK

Order 1.

In this personal injury case plaintiff and the manufacturer and designer of a bagasse drying system that exploded and allegedly caused great physical harm. The manufacturer, in turn brings a third-party complaint for contribution or indemnity against a number of other companies that contributed equipment or services in the installation of the drying system.

Two of the third-parties, Ward Systems and McCarthy products, bring a motion for summary judgement on the contribution or indemnity claim on the theory that the equipment they supplied was not "on line" when the accident occured. The argument, however does not follow. Simply because the equipment was not turned on does not preclude the possibility that in the installation work to that point some negligence took place that contributed to the accident. However, there are factual issues as to whether the equipment was on line and whether Ward System and McCarthy products provided additional services that may have contributed to the accident. There being genuine issue of material fact, the motion for summary judgement is denied.

Another third-party defendant Waialua Sugar, which employed the plaintiffs at the time of the accident, move for summary judgement on the same contribution or indemnity claim. Waialua Sugar argues that neither contribution nor indemnity is allowed against an employer under rule of Kamali v. Hawaiian electric Co., 54 HAW. 154 (1972). Waialua is correct as to the contribution claim. The Hawaii Supreme Court squarely faced the issue in Kamali and held that under HRS sec. 386-5 contribution is not allowed. 54 HAW. 157.

As to indemnity claim, however, Waialua Sugar is mistaken. Kamali did not completely rule out the possibility of an indemnity claim against employer. The court specifically said we recognize that a third party is entitled to sue employer.

ORDER 2

For indemnity based on breach of an independent duty.....Id at 162. The court noted several ways such an independent duty might be proven, among them express contract, implied agreement to indemnify, or the existence of special relationship between the parties. In Kamali the court reached only the express contract theory, holding that there were insufficient facts to support the existence of an indemnity contract. The court did not discuss the other possible theories.

Here, the third-party plaintiff alleges a breach of an independent duty arising on either an implied agreement or the special relationship of the party, whether sufficient facts can be marshalled to support either of these theories remain to be seen. But Waialua sugar has not shown that as a matter of law the claim is improper.

The motion for summary judgement brought by Ward Systems and McCarthy products is denied. The motion for summary judgement brought by Waialua is granted as to the claim for contribution and denied as to claim for indemnity.

it is so ORDERED.

Dated this 30 day of April , 1982

"s/ "

Case note: 54 HAW 158

P. 158 Supreme Court of Hawaii
Opinion of the Court

Purpose of such legislation is to achieve certainty - certainty that an employee will be compensated for all work injuries regardless of his negligence or fault; and certainty with regard to the amount for which the employer shall be liable. There is a compromise where the chance that an employee may not recover at all and the chance that an employer will be charged with excessive judgement are eliminated.

The position of the majority of jurisdictions is that to allow contribution in the face of the exclusive liability provision of the Worker's Compensation Law would be to strip the employer of every protections intended by the statute. However, a minority of jurisdictions have adopted a theory of limited contribution against an employer which does not subvert the policy of the Workmen's Compensation Law, Larson, The Law of Workmen's Compensation sec 76.22 p 238 (1970). Basic to this position is the proposition that it is unfair for one joint tortfeaser to bear the entire loss merely because the other joint tortfeaser is an employer. Since full contribution would obviously render an. employer's protection illusory. Limited contribution is allowed up to the amount for which the employer would have been liable under the Workmen's Compensation law.

The policy underlying the Workmen's Compensation Law and the principle of contribution among joint tortfeaser were reconciled in Newport Air Park, Inc. v. United States, 293 F Supp 809 (D.R.I. 1968), where the court adopted the minority position of limited contribution and stated at 815:

KAMALI v. HAWAIIAN ELECTRIC
54 HAW 159

Opinion of the Court

However, as equitable as the minority position is, HRS sec. 386-5 clearly and unequivocally precludes all contribution by a third party against an employer on the theory that the employer joint tortfeaser. .The adoption of any theory allowing contribution is a situation for legislative consideration.

DOES THE EXCLUSIVE LIABILITY PROVISION OF HRS sec 386-5 PRECLUDE HAWAIIAN ELECTRIC'S CLAIM FOR INDEMNITY?

Though on the part of HRS sec. 386-5 seems to limit all liability on the part an employer, we are of the opinion that the exclusive liability provision precludes only those actions which arise on account of the employee's injury. A third party claim for indemnity is not based upon contract or some other independent duty existing between indemnitor and indemnitee
Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corporation, 350 U.S. 124 (1955).

1. BALANAY SOPHIE vs. FLU-EQUIP
2. BALANAY SOPHIE vs. LYNCH CO., INC.
3. BALANAY SOPHIE vs. MANOSA ALLEN JAMES
4. BALANAY SOPHIE vs. Mc CATHY PRODUCTS CO.
5. BALANAY SOPHIE vs. O'NEIL TANK CO.
6. BALANAY SOPHIE vs. RADFAB CONSTRUCTION INC.
7. BALANAY SOPHIE vs. WAIALUA SUGAR MILL
8. BALANAY SOPHIE vs. WARD SYSTEMS, INC.

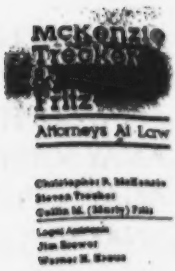
NOTICE

1. Sophie Balanay and Bonifacio Balanay, Sr. brought court action against all above companies listed above under civil no. 63547
    1. Flu-Equip
    2. Lynch Co., Inc.
    3. Manosa Allen James
    4. McCarthy Products Co.
    5. O'Neil tank co.
    6. Radfab Construction Inc.
    7. Ward Systems, Inc.

AS OF THIS DAY

2. Civil no: 63547 is still open and pending within Honolulu, Hawaii , Circuit of the First Circuit Court.
    (a) action started in the year of 1980 and civil no: 63547 is still open - pending in this year of 2001.

January 2, 1985



Mr. Bonifacio Balanay, Sr.
Mrs. Sophie Balanay
P.O. box 357
Haleiwa, Hawaii 96712

INTERIM ACCOUNTING

GROSS SETTLEMENT PROCEEDS	$ 425,000.00
Less: Amount retained for worker's Compensation lien, pending disposition re: same	$170,000.00
Net settlement after work comp	$ 255,000.00
Less. Attorney's fee on net settlement (40%)	$ 102,000.00
60% of Balanay case costs	($6,868.22)
(see attached)	$4,120-93
	$ 106,120.93

Net settlement proceed distributed to clients on 1/2/85

Check to Bonifacio Balanay and Sophie Balanay	$48,879.07
Check to Paine Weber for America Capital Government Securities, Inc. in the name of Bonifacio Balanay & Sophie Balanay	$100,000.00

Approved and received

Dated 1/2/85

"s/ BONIFACIO BALANAY "

"s/ SOPHIE BALANAY "

of counsel
Stephen K. Yamashiro

Paine Webber Inc.
P.O. BOX 3347
Honolulu, Hawaii 96801-3347

Paine Webber
Investment Account

Your Investment Executive
Mr. Gregory Boxold

Trecker and Fritz
Re: Bonifacio Balanay
820 Mililani Street Suite 710
Honolulu, Hawaii 96813-2937

Bonifacio Balanay, Sr.
(Deceased)
Account number: JR 68084-67

Bonifacio Balanay, Sr.
&
Sophie Balanay
open Account number JR 68084-67
on this date of January 2,1985
within PAINE WEBBER
P.O. BOX 3347
HONOLULU, HAWAII 96801- 3347

Bonifacio Balanay (died)
November 16,1988 set forth within appendix p.26 of this court document for Bonifacio Balanay, Sr. Death Certificate.

Under HAWAII REVISED STATUTES, section 532-1 to heirs (Deceased) Bonifacio Balanay has one surviving spouse Sophie Balanay and Sophie has seven

(deceased)
Bonifacio Balanay, Sr.
Account number: JR 6808467
PaineWebber Account Investment.

Under Hawaii revised Statutes section 532-1 to heirs (deceased) Bonifacio Balaray, Sr. has one surviving spouse Sophie Balanay. Sophie Balanay has seven children.

1. Bonifacio Balanay, Jr.
2. Audrey Balanay
3. Calvin Balanay
4. Wanda Balanay
5. Stacey Balanay
6. Dennis Balanay
7. Gary Balanay

Sophie Balanay and her seven children are the legal heirs to probate no. 89-165 in the matter of the estate of, (DECEASED) Bonifacio Balanay (formal intestate), all of the above statement is set forth within appendix p.25 through p.27 which is attached onto this court document under this Court the United State Supreme Court Rule 12.7 petitioner Dennis Balanay is asking this court to transmit all court documents within the Hawaii Supreme Court - court documents within probate no. 89-165 in the matter of the estate of (Deceased) Bonifacio Balanay, Sr.

App. 21(c)

Notice

Appendix p 25. May 3, 2000 is a court document (record on appeal) within case no. 23389, case no. 23389 is in consolidate with case no. 22759 file within the supreme court in the state of Hawaii appendix p.25 has actual live birth certificate of all of Sophie Balanay seven children Sophie Balanay and Bonifacio Balanay January 31 1954 Marriage certificate In the Territory of Hawaii.

FILED

2000 JUN 15 A 7:51

EUGENE L. SABADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

case no: 23389

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the matter of the estate of	Probate no:89-165 (Formal intestate)
Bonifacio Balanay, Sr. (Deceased)	Honolulu Probate Judge: Kevin Chang

OPENING BRIEF

Under Hawaii Rule of Appellate procedure Rule 28, under Hawaii Revised statutes section 554A-11(c), under Hawaii Revised Statutes section 532-2 to heirs, also under (IRS) Internal Revenue Service code section 531 appellant Dennis Balanay will file his OPENING BRIEF within this court proceeding of case no: 23389 in the cityand county of Honolulu.

Notice

within the above court document within page 4. is a copy of Mc Kenzie Trecker & Fritz Attorney at Law settlement of Bonifacio Balana and Sophie Gross settlement proceed of $425,000.00.

Rule 12.5

Under the United States Supreme Court rule 12.5 petitioner Dennis Balanay wants the entire court Documents which are filed within case no. 23389 to be transported and attached into this court proceeding of Dennis Balanay petition for writ of certiorari.

43,505 ACCUMULATED EARNING TAX
(23,001) IMPOSITION OF ACCUMULATED EARNING

sec 531 (1986 code)
Regulation
(23,004) Penalty Tax on Improper Accumulation
CCH Explanation
.011 Purpose of the Code Sec 531 tax
The basic aim of the accumulation earnings tax under code 531-537 is to prevent a corporation from accumulating income in order to shelter its stockholders from the individual income taxes that would have to pay if the corporation's income were distributed to them as dividends thus the tax serve to punish any tax-avoidance scheme of deferment of stockholder income. This is accomplished by imposing an additional tax on corporate earning and profit that are accumulated in excess of reasonable business needs. In the absence of such tax, stockholders could without any limitation, take advantage of (1) lower income tax rates by delaying payment of dividends until years in which other income could be excepted to be reduced, or (2) lower capital gains taxes by allowing substantial amounts of income to accumulation in the corporation before liquidating or transferring their stock. Some accumulation is allowed without the risk of additional tax liability, but amounts in excess of $ 250.00 ($150,000 for service-type corporation) will be examined by the IRS to determine whether they were accumulated with taxavoidance intent (Code sec. 532(a) and Code sec. code 535 (c),. If that intent was present, even if it wax not the dominant motive, the corporation will be penalized.

42,806 ACCUMULATED EARNING TAX-531 (23,001)
Penalty tax on Improper Accumulation

CCH Explanation
sec 532(a) and Code sec. 535(c). If that intent was present, even if if was not the dominant motive, the corporation will be penalized.

Consequently, the enforcement of the accumulation earning tax requires the IRS to reach a conclusion as to whether the corporation should have paid out its earning in dividends. to do this, the IRS meat pass judgement on the wide range of business decisions (see Reg sec 1, 537-2) unlike the corporate income tax, the accumulated earnings tax is not self-assessed. Thus, unsophisticated corporate management may not be aware of a potential accumulated earning tax liability until it is brought to its attention by an IRS agent in the course of an audit.

.021 Rate of tax. The method for computing accumulated taxable income is set forth in code sec 535 see (23,045.01) et seq. for a discussion and examples illustrating the computation. Accumulated taxable income is taxed at the highest rate of tax under sec. 1(c)(code sec-531).

.03 Constitutionality of the Statutes.The U.S. Supreme Court, in the case of National Grocery CO. ((38-2 USTC 9312,23.004.125 upheld the constitutionality of the surtax on improper accumulations imposed by sec. 104 of the 1928 act (similar to code sec 531 under the 1986 Act) CCH

.125 Constitutionality up-held
National Grocery Co., 38-2 USTC ((9312,304
304 US 282,58 Sct 932. @ 2001.CCH INCORPORATED

HELVERING v. NATIONAL GROCERY CO.
304 U.S. 283
Opinion of the court

(9) to weigh the evidence, draw inferences from it and declare the result is a function of the beard of tax appeals not subject to review by the Circuit Court of Appeal, p 294.
92 F 2d 931 reversed

OCTOBER TERM, 1937
opinion of the court

304 U.S. 294

Thus, independently of presumption prescribe sec. 104 (b) there was ample evidence to support the board's finding.
Fourth. The court of appeals, instead of limiting its review to ascertaining whether there was evidence to support the board's findings and decision, made on all the evidence as upon a trial De Novo, in effect, an independent determination of matters which had been in issue before the beard, the court was without power to do so, HELVERING v. RANKIN, 295 U.S. 123, 131-132. To draw inferences, to weigh the evidence and declare the result was the function of the Board Hulburd v. Commissioner 296 U.S. 300,306 ; Elmhurst Cemetery Co. v. Commissioner., 300 U.S. 37,40.

App. 25

FILED
2000 MAY -3 P 2:41
CLERK, APPELLATE COURTS
STATE OF HAWAII

case no: 23389

In the Supreme Court of the State of Hawaii

in the matter of the	)	probate no:89-165
estate of	)	(formal intestate)
	)	exhibit
	)	(a) p1
Bonifacio Balanay, Sr.,	)	(b) p1-p9
(Deceased)	)	(c) p1-p7
	)	(d) p1-p2

Record on appeal

Under Hawaii rule of appellate procedure ,the record on appeal, appellant surviving spouse Sophie Balanay and her son Dennis Balanay want all court documents filed within probate no. 89-165 in the matter of the estate of Bonifacio Bala (deceased) to attach to this record on appeal for the purpose of appellant's appeal against Honolulu Judge Kevin Chang April 12, 2000 final judgement closing the estate of probate no.89-165 in the matter of Bonifacio Balanay, Sr., (deceased) see exhibit (E) 4/12/200 judgement, also appellant Sophie Balanay and her son Dennis Balanay want all court documents' filed within Hawaii Supreme Court under 22111 and case no. 22759 to be attached to this record on appeal., see exhibit (a) for Hawaii Supreme Court, court order on about Oct 29, 1999

The above Document "Record on Appeal" case no. 23389, was filed May 3, 2000

(1). **Certificate of Death of Bonifacio Balanay, Sr.**
On about November 16, 1988 Bonifacio Balanay, Sr. (deceased); however, under Hawaii Revised Statutes 532-1 to heir and under common law estate of Bernice Bishop 5 Haw 288 within probate no. 89-165 (deceased) Bonifacio Balanay, Sr., has a surviving spouse Sophie Balanay and she has seven children, for proof Sophie seven children will this court see and read into the entire court documents of probate no. 89-165 court documents which is located and filed within, Honolulu Circuit of the First Circuit Court in the State of Hawaii probate no. 89-165 in the matter of the estate of Bonifacio Balanay, Sr. (deceased)(formal intestate) in reference to above statement will this court see and read into case no. 23389 record on appeal which is filed within the Supreme court of the State of Hawaii within Exhibit (B)

(2). Within exhibit (b) p2 is a copy of Bonifacio Balanay and Sophie Balanay Marriage certificate recorded January 11, 1953 in the Territory of Hawaii.

(3). exhibit (b) p3 certificate of live birth Bonifacio and Sophie first born Bonifacio Balanay born on February 18, 1953

(4). within exhibit (B) p3. is a copy of the certificate of live birth of Bonifacio Balanay and Sophie Balanay no: (2) child Audrey Balanay date of birth January 18,1954.

(5). within exhibit (B) p.5 is a Copy of a certificate of live birth of Bonifacio and Sophie no. 3 child who was born on this date July 7, 1956

(6). exhibit (B) is a copy of certificate of live birth of Wanda Balanay Wanda is Bonifacio and Sophie Balanayno; 4 Child who was born on this date of December 3,1957

(7). exhibit(B) p.7 is a copy of certificate of live birth of Stacey Balanay who was born on August 31,1960 . Stacey Balanay is Bonifacio and Sophie Balanay no. 5 child

(8). exhibit (B) p.8 is a copy of certificate of live birth of Dennis Balanay, Dennis is Bonifacio and Sophie Balanay no. 6 child

(9). exhibit (B) p.9 is a copy of certificate of live Birth of Gary Balanay, Gary is Bonifacio and Sophie Balanay no: 7 child who in born within the Balanay family.

Under Hawaii Revised Statutes section 5322 to heirs Sophie and Bonifacio Balanay Sr., have seven children,

Therefore within probate no. 89-165 in the matter of the estate of Bonifacio Balanay, Sr. (Deceased)(formal intestate) under common law of case note estate of Bernice Pauahi Bishop 5 Haw 288 also under Hawaii Revised Statutes section 532-2 to heir as of November 16, 1988 on the date of death of Bonifacio Balanay, Sr., Sophie Balanay and her seven children are the legal heirs to probate no. 89-0165

Under rule 12.7 of the Supreme court of United States, Sophie Balanay and her seven children want all court documents file" within probate no. 89165 also Hawaii Supreme court case no.22759 to transported into this court and to be all part of this court proceeding.

Under Hawaii Revised Statutes.

HRS sec 554-A-6 - POWER EXCERCISABLE BY JOINT TRUSTEE; LIABILITY.

(a) Any power vested in three or more trustees may be exercised by a majority. But a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequence of the exercise, and a dissenting trustee is not liable for the consequences of an act in which the trustee joins at the direction of the majority of the trustees, if the trustee expressed a dissent in writing to any cotrustee at or before the time of the joinder.

(b) If two or more trustees are appointed to perform a trustee, and if any of them is unable or refuse to accept the appointment, or having accepted, ceased to be a trustee, the surviving or remaining trustee shall perform the trust and succeed to all powers, duties and discretionary authority given to the trustees jointly

(c) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

Uniform Custodial Trust Act / Hawaii Revised Statutes section 554A-6

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

William K. Suter
Clerk of the Court

September 17,2001

Dennis Balanay
P.O. Box 357
Haleiwa, HI 96712

RE: Dennis Balanay v. Coates & Frey

Dear Mr. Balanay:

Returned are 39 of 40 copies of your petition for writ of certiorari in the above entitled came postmarked on September 5, 2001, which fails to comply with the rules of this court. If you intend to pay the $300 docket fee ,the petition must be in booklet format and paper that measures 6 1/8 by 9 1/4 inches.

Kindly correct the petition and appendix so that it complies in all respects with the Rules of the Court and return it to us promptly so that it may be docketed. Unless the petition is received by this office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5

"s/ Sincerely,
William K. Suter, Clerk
By: Loretta S. Ruffin "
Loretta S. Ruffin
(202) 479-3039